

2002

State of Utah v. Michael Allen Norton : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,

Plaintiff/Appellee,

vs.

MICHAEL ALLEN NORTON,

Defendant/Appellant.

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Appellate Case No. 20020109-CA

BRIEF OF APPELLANT

APPEAL FROM THE JUDGMENT OF CONVICTION
ENTERED BY THE FIRST JUDICIAL DISTRICT COURT,
IN AND FOR CACHE COUNTY, STATE OF UTAH, THE HONORABLE
CLINT S. JUDKINS PRESIDING

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FILED
Utah Court of Appeals

AUG 07 2002

Paulette Starn

LIST OF PARTIES

Michael A. Norton (Defendant/Appellant)

Bryan Lloyd (Co-Defendant At Trial Level)

Deloy Lindley (Victim At Trial Level)

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,

Plaintiff/Appellee,

vs.

MICHAEL ALLEN NORTON,

Defendant/Appellant.

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Appellate Case No. 20020109-CA

BRIEF OF APPELLANT

JURISDICTION

Pursuant to Utah Code Ann. §78-2a-3(2)(e), the Utah Court of Appeals has jurisdiction over this matter because it is an appeal of judgment in criminal proceedings that do not involve first degree or capital felony convictions.

STATEMENT OF ISSUES & STANDARDS OF REVIEW

- a. Whether Title 53, Chapter 11 of the Utah Code, the Bail Bond Recovery Act, as applied to Appellant by the trial court, created an unconstitutional “strict liability” offense, negating the State’s burden of proving the “mens rea” element in the prosecution against Appellant? This issue was preserved for appeal via motion argument on March 30, 2001 (Transcript, 3/20/2001, page 23, lines 5-20) and at the close of trial on November 15,

2001 (Transcript, 11/15/2001, pages 155-56, lines 2-25 and 1-2 respectively).

- b. Whether Appellant's Due Process rights were violated when the trial court prohibited Appellant from presenting evidence and clarifying, for the jury, his conduct in determining the appropriate course of action to take in revoking the subject bond? This issue was preserved for appeal via motion argument on March 30, 2001 (Transcript, 3/20/2001, page 23, lines 5-20) and at the close trial on November 15, 2001 (Transcript, 11/15/2001, pages 155-56, lines 2-25 and 1-2 respectively).
- c. The **Standard Of Review** is a correction of error standard, according no deference to the trial court's ruling, inasmuch as each of the issues present questions of law. State v. Martinez, 14 P.3d 114, 115-16 (Utah App. 2000).

DETERMINATIVE STATUTES AND RULES

Utah Code Ann. §§ 53-11-107 (2001), 76-2-101 (2001), 76-2-102 (2001), 76-5-102 (2001), 76-5-304 (2001), and 77-20-8.5 (2001).

STATEMENT OF THE CASE

(a) Nature Of The Case:

This appeal is taken from the convictions for Appellant's alleged violations of the Bail Bond Recovery Act, Utah Code Ann. §53-11-107 (two counts), assault (one count) under Utah Code Ann. §76-5-102, and unlawful detention (two counts) under Utah Code Ann. §76-5-304, entered by the First Judicial District Court, State of Utah, the Honorable Clint S. Judkins presiding.

(b) Course Of Proceedings And Disposition Below:

On or about May 12, 2000, an Information was filed in the First Judicial District,

charging Michael Alan Norton, Appellant (hereinafter “Norton”), with two counts of violation of the Bail Bond Recovery Act (hereinafter, the “Act”), two counts of Unlawful Detention, and one count of Simple Assault. (R 159-61) On or about May 31, 2000, Mr. Norton entered not guilty pleas to all charges. (R 4-5)

On or about September 28, 2000, because of prior dealings that Norton and the Cache County Attorney’s Office had been part of, and the potential for the Cache County Attorney’s Office to become witnesses in these proceedings, Norton filed a Motion to Disqualify the Cache County Attorney’s Office from prosecuting the case. (R 20-21) On or about November 6, 2000, the Cache County Attorney’s Office determined that there may in fact be a conflict with their office handling the prosecution and requested that the lower court grant additional time for response and for bringing on conflict prosecutors to handle the matter. (R 42-43) On or about December 22, 2000, Norton filed a Supplemental Memorandum regarding his motion to disqualify the Cache County Attorney’s Office and included a new motion to Allow Defendant to Use Ignorance of or Mistake of Fact and Mistake of Law as a Defense. (R 46-85) On or about March 30, 2001, following substitutions of counsel for both sides, Norton’s motions came before the lower court for an evidentiary hearing. (R 100-01)

Each side gave opening statements, following which, Mr. Tony Baird, Deputy Cache County Attorney, took the stand and was sworn under oath. Following Mr. Baird’s testimony, the State rested, Norton did not call witnesses, and each side gave closing argument. (R 100-01) Mr. Norton’s counsel argued that even without the mistake of law defense, the evidence must be

allowed to go before the jury because it relates directly to the “intent” issue in this case.¹

(3/20/2001 Tr., p. 23) The lower court ruled in favor of the State’s position, that the Mistake of Law defense was inapplicable and Norton was prohibited from introducing evidence or even arguing, at trial, any inferences or innuendoes regarding his attempts to verify his legal responsibilities. The Findings of Fact, Conclusions of Law and Order of the Court regarding this matter was entered by the lower court on or about September 24, 2001. (R 122-24)

Subsequent to these events, Norton filed a motion to Dismiss, on or about October 22, 2001, based in part upon the misprinting of the subject statutory provisions.² (R 125-26) The State filed a Memorandum in Opposition to Norton’s motion on or about November 1, 2001, claiming Norton was simply rehashing the same issues the trial court had already decided, i.e., once again trying to use a mistake of law defense. (R 143-57) The trial court ultimately denied Norton’s dismissal motion, at the close of the first day of trial, for reasons set forth in the State opposition memorandum. (11-14-2001 Tr., p. 272)

The case against Norton and his co-defendant, Mr. Bryan Lloyd (hereinafter, “Lloyd”) came on for jury trial on November 14, 2001. (R 204) The trial took two days to complete, the matter was presented to the jury for deliberation on November 15, 2001. Following deliberation, the jury returned unanimous “guilty” verdicts on all counts, as against both Norton

¹ Defense counsel basically conceded “mistake of law” as inapplicable to the case, but nonetheless argued in favor of a ruling by the court to allow the evidence to be developed at trial regarding Norton’s state of mind.

² Utah Code Ann. §77-20-8.5, which Norton first looked at, referred the reader to Title 53, Chapter 10, as provisions that must be adhered to in effectuating an arrest and return to jail of bonded defendants. As it turned out, the legislature adopted two different Chapter 10s in 1998 and the subject statute was amended to be Chapter 11. Because Norton was unaware of the misprint at the time, his motion to dismiss was based upon “notice” issues.

and Lloyd. (R 252-53)

Norton was sentenced on or about January 14, 2002, and was given concurrent jail sentences, suspended pending successful completion of probation through Adult Probation & Parole. Terms of Norton's probation included an approximate jail term of 42 days, which Norton began serving forthwith. Additional standard terms of probation were required, including medical and counseling expenses of the victim and/or his family and also that Norton receive a mental health evaluation. (R 260-62) Norton began serving his sentence forthwith and, on or about January 25, 2002, Norton timely filed his notice of appeal. (R 265)

(c) Statement Of Material Facts

At some point in or around 1996, 1997, Mr. Norton was asked by the Cache County Attorney's Office to revoke the bond of one of his clients, arrest the individual and return her to the Cache County Jail, even though the appropriate revocation documentation had not yet been filed with the court. Pursuant to the direction of the Cache County Attorney's Office, Norton did in fact revoke the bond of that individual and returned her to the custody of the Cache County Jail. (R 24, 38) In approximately May of 1998, subsequent to the 1996/1997 arrest and revocation, the State of Utah changed the laws regarding bail revocation and defendant recovery, it was now requiring licensing. In November of 1999, the State of Utah sent out notices to the courts, the jails, and Sheriff's departments, regarding the new bail recovery laws. (State's Exhibit #3) However, no notices were sent out to the bonding companies at that time, the very entities that were the subject of the new legislation.³

³ Notice was eventually sent out to the bonding companies, but not until April 26, 2000, approximately ten days **after** the latest events giving rise to Norton's charges. (State's exhibit #4)

On or about March 10, 2000, Deloy Marion Lindley (hereinafter “Lindley”) contacted Norton through “A+ 24 Hour Bail Bonds,” in an attempt to get bonded out of the Cache County Jail, where he was being housed on various felony drug charges, his bond having been set at \$50,000.00. (11-14-2001 Tr., p. 63) Norton, as an agent for A+ 24 Hour Bail Bonds, met with Lindley at the Cache County Jail to discuss the potential release options. Lindley completed the appropriate bonding application, Norton accepted Lindley as a client and Norton posted Lindley’s bond. (Defendant’s exhibit #1) Lindley was released from the Cache County Jail facility shortly thereafter, on the bond Norton had posted, which was based upon the information Lindley had provided in his application. Following Lindley’s release from jail, he was to pay over to Norton an amount equal to ten percent of the initial bond; in this case Lindley was to pay over to Norton an amount of \$5,000.00. Over the next week or two, Norton made several attempts to collect the funds from Lindley but was never able to do so. In addition, it was learned by Norton that Lindley had been less than honest in completing the bond application with regard to the collateral Lindley pledged as a guarantee of payment. (11-15-2001 Tr., pp 30-34)

Because Norton was concerned about his personal liability to his company on the Lindley bond, and coming to the realization that Lindley was never going to pay the ten percent and the pledged collateral was either not owned by Lindley or was significantly less valuable than what had been claimed on the bond application, Norton decided to revoke his bond and let Lindley make use of another bonding company if he wanted to remain free on bail. (11-15-2001 Tr., p. 35) Norton contacted the Cache County Attorney’s Office and spoke to one of the Deputy County Attorneys. Norton was told that it sounded like a civil matter, but he could go out and pickup Lindley on his own and then sue him in civil court to get the financial matters

straightened out. (R 101, 123) Additionally, having access to the Internet, Norton looked up the Utah Code and found Utah Code Ann. §77-20-8.5, Sureties - Surrender of Defendant - Arrest of Defendant, a statute that Norton had become familiar with previously in his career. Section 77-20-8.5 had a provision that stated the arrest and surrender of a defendant was subject to the provisions of Title 53, Chapter 10 of the Utah Code, which Norton linked to and read. Although Section 77-20-8.5 identified Title 53, Chapter 10 as being the Bail Bond Recovery Act, what Norton found at that location was Criminal Investigations and Technical Services Division provisions.

Norton read through Title 53, Chapter 10 and could not see any basis or relevancy with regard to his arrest and surrender of a defendant for the purpose of revoking a bond. Norton reviewed Chapter 10 with one of his brothers, who is a police officer from another state, and he could not see the relevancy of those provisions to Norton's desires. Norton has another brother who is licensed to practice law in another state and Norton faxed a copy of both Section 77-20-8.5 and Title 53, Chapter 10 to that brother for review. Again, Norton was told it did not appear Chapter 10 had any bearing on Norton's obligations or responsibilities pursuant to his decision to revoke Lindley's bond, regarding his ability to arrest and surrender Lindley to the Cache County Jail. Believing he had the blessings of the Cache County Attorney's Office, having reviewed the Utah Code with his brothers, Norton was ready to pickup Lindley and revoke the bond. (R 127-42)

On April 4, 2000, with the assistance of his brother, the law enforcement officer from another state, Norton made a final attempt to collect his fees from Lindley and, failing to receive the funds, Norton took Lindley into custody and returned him to the Cache County Jail. (11-15-

2001 Tr., p. 43) Norton faxed the appropriate bail revocation documents to the First District Court, as allowed by law, but apparently the documents did not make it to Lindley's court file prior to Lindley's reappearance before the judge. (R 75) On April 6, 2000, Lindley appeared before the judge, because he had been re-incarcerated, and told the judge that he had no idea why his bondsman had revoked his bail and returned him to jail. No one from A+ 24 Hour Bail Bonds was present to identify the basis for the revocation and, not having received Norton's faxed documentation, the judge again released Lindley on Norton's bond. (R 57-60) At no point did the court or any other entity attempt contact with Norton to determine the basis for the revocation, nor did any entity attempt to contact Norton with notice that Lindley had been re-released on Norton's bond. Norton received a panicked call from Mr. Lindley's mother stating that Lindley had been released again and she wanted to know why. (11-15-2001 Tr., p. 44) Norton subsequently confirmed that Lindley had in fact been re-released and was once again out on the bond Norton had posted. (11-15-2001 Tr., pp 46-47)

On or about April 11, 2000, not having any information regarding why the court had turned Lindley loose again, but having been told that he was re-released on Norton's bond, Norton contacted the Cache County Sheriff's Office and requested assistance in re-apprehending Lindley. The Cache County Sheriff's Office provided assistance to Norton and an attempt was made to arrest Lindley at his residence and subsequently from Lindley's father's residence. Lindley was not found at either location, so Norton's attempt to revoke the bail was unsuccessful on that date. (11-15-2001 Tr., pp 49-50)

On or about April 16, 2000, with the assistance of another A+ 24 Hour Bail Bond employee (Mr. Lloyd), Norton returned to Lindley's residence to make an arrest and return

Lindley to the Cache County Jail. (11-15-2001 Tr., p. 50) Because Lindley had already been returned to the jail on one occasion, neither Norton or Lloyd knew what to expect from Lindley on this occasion. As such, Lloyd took his hand gun with him, for which he is licensed to carry.

Upon arrival at Lindley's residence, and following the initial attempt to get Lindley to accompany them to the Cache County Jail, Lindley began flailing around and screaming that he was not going back to jail. Norton eventually maced Lindley in an attempt to subdue him, but Lindley simply attempted to flee the scene. Lindley was ultimately apprehended by Norton and Lloyd and, following a brief scuffle in the field behind Lindley's residence, Lindley was eventually secured in Mr. Lloyd's vehicle. (11-15-2001 Tr., pp 51-59) During these events, subsequent to Norton spraying Lindley with mace but prior to the actual apprehension of Lindley in the field, it was alleged that Lloyd made inappropriate use of the handgun he was carrying by pulling it from its holster and threatening Lindley's daughter with the gun. (11-14-2001 Tr., pp 149-50; State's exhibit #2)

Prior to Lindley's transport, one of his children had fled the scene and called the police, apparently claiming shots had been fired at the residence. (11-14-2001 Tr., p. 210) The responding officers were in route as Lindley was being secured in Mr. Lloyd's vehicle for transport. Shortly after leaving Lindley's residence, the responding officers were observed and Lloyd, who was driving, pulled over. The responding officers made a high risk stop and investigation of Norton and the others and, once the officers determined all appeared to be in order, regarding Norton's grounds for revocation and arrest of Lindley, the officers relieved Norton of custody over Lindley. (11-15-2001 Tr., p. 65) Lindley was provided medical treatment for the mace incident and was taken to the hospital, by ambulance, for examination

based upon complaints of difficulty in breathing and pain. Following an examination by medical personnel at the hospital, Lindley was released to the police officers, who then transported Lindley directly to the Cache County Jail. (11-14-2001 Tr., pp 214-19)

Following these events, some ten days after the last occurrence for which Norton was charged, another notice was sent out by the State of Utah identifying the new law on licensing requirements for bond recovery agents; only this time, the notice was actually sent to bonding companies. (State's exhibit #4) Also, the Cache County Attorney's Office now all of the sudden determined that Norton was not licensed under Title 53, Chapter 11 of the Utah Code (the actual provision that Norton should have been referred to while researching the law on the Internet, but which was mistakenly identified as Chapter 10) and filed charges against Norton accordingly. As a result of Norton's actions on April 4th and April 16th, 2000, Norton was charged under a five-count Information; two counts "Operating/Acting As A Bail Enforcement And/Or Bail Recovery Agent Or Apprentice Without A License," in violation of U.C.A. §53-11-107, two counts "Unlawful Detention," in violation of U.C.A. §76-5-304, and a single count of "Assault," in violation of U.C.A. §76-5-102.

Norton's initial counsel challenged the Cache County Attorney's Office's ability to prosecute this case, in light of their involvement in Norton's actions, and moved to have that office removed from the case. (R 20-21) The Weber County Attorney's Office was brought in to prosecute the case on behalf of Cache County. Norton's counsel also filed a motion requesting allowance of Ignorance Of Or Mistake Of Fact And Mistake Of Law to be used by Defendant in trial. (R 46-85) Following a hearing on that motion, the lower court denied the request and ruled mistake of fact, ignorance of law is inapplicable to this case because Norton's direction,

given by the Cache County Attorney's Office, was not given in written form. As such, the defense could not be presented to the jury, nor could evidence or argument in support of such a defense be used in the trial, even though Norton's counsel had argued that even if the mistake defense was not appropriate, the evidence should be given to a jury with regard to "intent." (3/30/2001 Tr., p. 23) Nonetheless, the lower court denied Norton's plea, thereby precluding evidence that would be relevant to the "intent" issue, regardless of claims of mistake of law or fact..

Trial by jury commenced on November 14, 2001, and concluded on November 15, 2001. Lindley testified that Norton had retained sufficient collateral to cover the fees he owed for his bond; that Norton did not have the authority to revoke his bond and was told as much by the judge when he was re-released on April 6, 2000; that Norton and Lloyd physically assaulted him when he resisted the unlawful arrest on April 16, 2002; that Lloyd pulled his gun on Lindley's daughter and threatened her with it; and that as a result of the physical assault perpetrated upon him, Lindley had sustained severe pain and injury. (11-14-2001 Tr., pp 62-127) Lindley's wife testified that she had attempted contact with other bonding companies and could not obtain bonding through them; that she met with Norton and knew of the terms of the bonding agreement; that she had met Norton on subsequent occasions when Norton was attempting to collect his fees; that Norton had her husband's collateral, in lieu of the fee; that she signed over title to collateral to Norton to avoid having her husband taken to jail, on April 4, 2002, but it didn't matter, he was taken to jail anyway; that she was aware of the dispute regarding ownership of some of the collateral her husband had pledged for the bond and knew Norton could not take possession of all collateral pledged; and that she was not present during the April 16, 2002,

events. (11-14-2001 Tr., pp 128-35)

Lindley's children testified that their father argued with Norton and Lloyd, stating he was not going to be arrested; that Lloyd pulled a gun and threatened one of the daughters; that their father tried to flee but was tackled by Norton and was subsequently assaulted by Norton and Lloyd; that the police were called and written statements were given that were the same as those given at trial; some initial statements by one or more of the children were exaggerated a bit, but clarified later on. (11-14-2001 Tr., pp 136-93) An officer with the Utah Department of Public Safety testified as to the need for the new law regarding bail recovery and licensing; what the various licensing criteria were for and who they applied to; what training was required; that his department, he himself, sent out notices in November 1999 to courts, jails and sheriff's departments regarding the new law and identifying who was licensed at that point; that another similar letter was sent out on a different date [this one dated April 26, 2000 and actually sent to bonding companies this time], and again, including a up-dated list of licensed individuals; that neither Norton nor Lloyd were licensed or had ever applied for licensing; acknowledging that it did not appear anyone was paying any attention to the letters, including jails and law enforcement agencies. (11-14-2001 Tr., pp 195-209)

Cache County Sheriff's officers and one Highway Patrol trooper testified that they had assisted Norton in attempting to arrest Lindley on April 11, 2000, assuming all Norton's credentials were in order; they acknowledged they did not know whether or not Norton's credentials were in order, but assumed they were because they knew (or knew of) Norton because of his occupation; that they responded to a call of a disturbance at Lindley's residence, involving a gun and possibly shots fired; that a high risk stop of a vehicle was made, wherein Norton,

Lloyd and Lindley were located; that it was apparent a scuffle had occurred because Lindley was dirty and had grass and dirt on him consistent with a scuffle; that Lindley had obviously been maced; that Norton did not appropriately treat Lindley following the use of mace; that Lindley complained of pain and was claiming he had been beaten with a rock; that Lindley was treated at the scene and, because of his complaints of pain, Lindley was taken to the hospital for examination; that Lindley was released by the hospital following the examination and, showing no signs of injury, was taken to the Cache County Jail and booked back in, despite the objections and comments of Lindley; that the officers examined the documentation provided by Norton at the scene of the stop, regarding the bail revocation procedures, and the documentation provided by Lloyd regarding his authority to carry a firearm, and, following the document reviews, the officers took custody of Lindley and turned Norton and Lloyd loose. (11-14-2001 Tr., pp 209-71; 11-15-2001 Tr., pp 4-16)

Mr. Norton took the stand and testified on his own behalf and, pursuant to the trial court's pretrial rulings, Norton was not allowed to go into areas of testimony that would explain actions he took in attempting to verify the legality of the intended conduct, testimony regarding what the Cache County Attorney's Office had told him to do, which was a major basis for the actions Norton did take. (11-15-2001 Tr., pp 40-42) Also during the course of trial, Mr. Lloyd testified and, during cross examination, Lloyd was asked questions regarding what, if anything, Lloyd had done to determine the legality of his and Norton's conduct on April 16, 2000. These were the very factors that Norton had wanted to explain to the jury but the trial court had precluded him from presenting. (11-15-2001 Tr., pp 146-52)

Norton believed the State had swung the door wide open, at least with regard to allowing

Norton an opportunity to clarify issues with respect to what Norton had done to verify his obligations and the legality of his actions in these events because Lloyd testified he'd done nothing more than rely on Norton's word that their actions were legal. At a sidebar meeting with counsel, the trial court denied Norton an opportunity to re-testify, to clarify issues and evidence presented to the jury, which could now be inferred through Lloyd's testimony that nothing had been done by either defendant to check into the legality of their actions. The trial court simply referenced its prior ruling that the mistake defense would not be allowed and no further evidence would be allowed on the issue, and none would be allowed to clarify what procedures Norton had followed before he commenced his actions in April of 2000. (11-15-2001 Tr., pp 154-56)

The case was presented to the jury who, following deliberation, returned guilty verdicts on all five counts against Norton. Following a pre-sentence investigation, Norton was sentenced on January 14, 2002. (R 260-62) On January 25, 2002, Norton timely filed his Notice of Appeal. (R 265) Norton served approximately 42 days in the Weber County Jail (transferred from the Cache County Jail for safety reasons) and is currently on probation, under the supervision of Adult Probation and Parole.

SUMMARY OF THE ARGUMENT

The Bail Bond Recovery Act, Utah Code Ann. §53-11-101, et seq. (Supp. 2001) does not establish provisions for conduct that, if violated, presents a strict liability offense. Violation of Section 53-11-107 of the Utah Code is not a strict liability crime and Norton was denied his right to judicial due process when the lower court prohibited Norton from explaining what processes he went through to determine how to go about revoking Lindley's bond. As a result of his inability to address the "intent" element of the underlying charges in any meaningful fashion,

Norton was denied a fair trial on all counts. Had Norton been able to provide relevant and mitigating evidence to the jury, there is a substantial likelihood that the verdict would have been different, all the way around. As the State argued, if the jury found Norton was acting illegally in apprehending Lindley, then Norton had no right to detain Lindley and he had no right to have taken him into custody, despite Lindley's resistance in the arrest. As such, it is an equally logical argument that, based on the evidence, if the jury determined Norton was not acting illegally in making his arrest, then he also would have been justified in detaining Lindley and in the use of reasonable force in the process.

ARGUMENT

Point One

As Applied To Mr. Norton's Case, The Lower Court Turned Utah Code Ann. §53-11-107 Into A Strict Liability Crime.

As noted above, in response to a pretrial motion, the trial court ruled that Norton could not present evidence as to what he had done to determine the legal requirements for revoking Lindley's bond and returning him to the custody of the Cache County Jail; a ruling that was continued in spite of the fact that Lloyd testified in trial that he had personally done nothing to determine the legalities, with the exception of asking Norton if their conduct was legal. The jury could plainly have inferred that Norton also had done nothing to verify legitimacy of their actions since Norton had not testified or otherwise presented any evidence to the contrary. By denying Norton his right to testify as to what steps he took to determine the legality of his actions, the trial court applied the law to Norton as if it were a strict liability type offense.

The key stone of the State's case against Norton was the charge that he was acting as a

bail recovery agent without proper licensing, in violation of Utah Code Ann. §53-11-107 (2001).

If the State carried its burden on this claim, the burden in proving the remaining charges of unlawful detention and simple assault would be significantly decreased; if, however, the State were unable to carry its burden regarding the Bail Bond Recovery Act violation, then it is equally apparent that the State's difficulty in carrying its burden on the other charges would significantly increase.

The relevant portion of the Bail Bond Recovery Act, Utah Code Ann. §53-11-107 (2001), reads as follows:

- (1) Licenses under this chapter are issued in the classifications of:
 - (a) Bail enforcement agent;
 - (b) Bail recovery agent; or
 - (c) Bail recovery apprentice.
- (2) A person may not:
 - (a) Act or assume to act as, or represent himself to be, a licensee unless he is licensed under this chapter; or
 - (b) Falsely represent that he is employed by a licensee.
- (3) The commissioner shall issue licenses to applicants who qualify for them under this chapter.
- (4) A license issued under this chapter is not transferable or assignable.

A violation of this statute is a class A misdemeanor.⁴ It was never a disputed point as to whether Norton was licensed as a bail recovery agent; he was not and fully admitted such from the beginning and during his testimony at trial. However, Norton also made clear that he was unaware of the licensing requirement and, in spite of all the steps he took prior to his actions in this matter, he was not informed of the requirement until after the events. The main point of contention herein is the fact that Norton was denied the opportunity to explain to the jury just what steps he did take in order to legally go about his business in apprehending Lindley. Norton

⁴ Utah Code Ann. §53-11-124 (2001)

did not claim nor hold himself out to be licensed, and he never claimed he was working for a licensee.

Norton was totally unaware of the license requirement, even after he had spoken to the County Attorney's Office and had told them what he wanted to do; the County Attorney's Office had been given notice of a licensing requirement in November of 1999 and the notice included a list of all licensed individuals. (State's exhibit #3) Norton should have been allowed to present and develop this information because the County Attorney's Office was already in possession of the notice when it told Norton to go arrest Lindley on his own; the Sheriff's office was already in possession of this notice when it attempted to assist Norton effectuate the arrest on April 11, 2001; if either entity cared about Mr. Norton's conduct, their own conduct would have been different because both entities apparently had knowledge and notice that Norton was not a licensed bail recovery agent when each entity took its own course of action.

Since §53-11-107 (2001) does not identify or define the culpable mental state required for criminal violations under its provisions, the provisions of the criminal code apply in construing offenses of this type.⁵ As found in Utah Code Ann. §76-2-101 (2001), we find:

No person is guilty of an offense unless his conduct is prohibited by law and:

- (1) He acts intentionally, knowingly, recklessly, with criminal negligence, or with a mental state otherwise specified in the statute defining the offense, as the definition of the offense requires; or
- (2) His acts constitute an offense involving strict liability.

Elsewhere in the Utah Code, at Utah Code Ann. §76-2-102 (2001), it states:

Every offense not involving strict liability shall require a culpable mental state, and when the definition of the offense does not specify a culpable mental state and the offense does not involve strict liability, intent, knowledge, or recklessness shall suffice to

⁵ Utah Code Ann. §76-1-103(1) (2001)

establish criminal responsibility. An offense shall involve strict liability if the statute defining the offense clearly indicates a legislative purpose to impose criminal responsibility for commission of the conduct prohibited by the statute without requiring proof of any culpable mental state.

Because Section 53-11-107 does not define a strict liability offense and does not specify a culpable mental state, the State, to carry its burden, was required to demonstrate beyond a reasonable doubt that Norton intentionally, knowingly, or recklessly acted as a licensee under Chapter 11 of Title 53, even though Norton was not actually licensed.

Just as proof of the requisite mental state is a critical piece of any criminal prosecution, it is equally critical that a defendant not be prohibited from presenting evidence that goes to the question of whether the defendant acted with the requisite mental state. To preclude such evidence is to deprive the defendant of the fundamental right to a fair trial on all of the issues. *See Chambers v. Mississippi*, 410 U.S. 285, 295 (1973) (“The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State’s accusations.”). Denying a defendant the right to personally present testimony or evidence opposing any element of the prosecution’s case is tantamount to denying all together a defendant’s right to challenge the prosecution - it destroys a defendant’s presumption of innocence. As the United States Supreme Court has explained:

The right to offer the testimony of witnesses . . . is in plain terms the right to present a defense, the right to present the defendant’s version of the facts as well as the prosecution’s to the jury so it may decide where the truth lies. Just as an accused has the right to confront the prosecution’s witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. The right is a fundamental element of due process of law.

Washington v. Texas, 388 U.S. 14, 19 (1967).

In the instant case, it seems clear that the trial court’s ruling, prohibiting Norton from re-

taking the stand and telling the jury what he had done to determine the legal requirements concerning the apprehension of Lindley, denied Norton not only his right to testify on his own behalf but the fundamental right to present a defense. Norton's testimony was clearly relevant to the question of whether he acted with the requisite mental state for a violation of Section 53-11-107 (*i.e.*, intentionally, knowingly, or recklessly), a core issue in this case. That is particularly so where the State was allowed to elicit such evidence from Lloyd, a co-defendant, from which the jury plainly could have inferred that Norton also made no effort to research the law, making it more likely the jury would find that Norton acted intentionally, knowingly or at least recklessly in violation of Section 53-11-107. *See United States v. Whitman*, 771 F.2d 1348, 1351 (9th Cir. 1985) ("The district court was free to exclude evidence of appellant's motive, but once the government produced evidence from which the jury could reasonably infer the [improper] motive [claimed by the government], appellant had the right to rebut this evidence."). Likewise, Norton had the right to put on evidence in support of his position that he did not have the culpable mental state required for conviction.

Point Two

By Denying Mr. Norton The Right To Present Evidence To The Jury, Norton Was Denied His Right To Due Process And A Fair Trial.

Clearly, our judicial system protects the right of the accused to present relevant evidence, even in rebuttal, to any and all evidence presented by the State in carrying forward its burden of establishing criminal conduct. Unless sufficiently satisfied that a statute or provision encompasses a strict liability crime, a trial court is required to hold the prosecution to a beyond reasonable doubt standard for all elements of the alleged crime, including that of the intent

element. When a case is heard by jury, it is incumbent upon the trial court to make sure that all relevant evidence is allowed, if offered, in order to assist that jury in determining where the truth lies; whether or not the requisite burden of proof has been met. That burden was lifted from the State in Norton's case, clearly in violation of Norton's Due Process protections.

In his dissenting opinion in State v. Martinez, 14 P.3d 114 (Utah App. 2000), Justice Davis wrote "[t]he basic principle of criminal liability in our system is expressed by the maxim, *actus not facit reum nisi mens sit rea* - - an act does not make one guilty unless one's mind is guilty." 14 P.3d at 120. It is undisputed that in our system of justice, some form of mens rea evidence will have to be presented in order for the prosecution to achieve convictions for criminal offenses. Equally undisputed is a defendant's right to present evidence in opposition to the prosecution, whether through physical evidence or testimonial evidence. Norton was denied his right to present contrary mens rea evidence via his own testimony and that of other witnesses he would have called, had the trial court not prohibited his right to challenge the State's position.

As clearly outlined by jury instructions numbers two, three, four, six, and eight, the burden on the State was to prove beyond reasonable doubt that Norton's conduct was intentional and/or knowing and without the authority of law.⁶ (Emphasis added) Mr. Norton wanted to testify that he had acted in the same manner, on behalf of the Cache County Attorney's Office, back in 1996 or 1997. Mr. Norton wanted the jury to know that he had researched the laws via

⁶ *E.g., Jury Instruction Eight: Before you can convict the Defendant, Michael Norton, of the crime of Operating as a Bail Enforcement Agent or Bail Recovery Agent Without a License, you must find from the evidence beyond a reasonable doubt all of the following elements of the crime: One, that said Defendant, Michael Norton, (b) on or about April 16th, 2000, (c) intentionally or knowingly, **without authority of law**, (d) acted or assumed to act or represented himself to be licensed as a bail enforcement agent or bail recovery agent when, in fact, he was not licensed. (Emphasis added).*

the Internet prior to the April 2000 events and did not know of the licensing requirement. Mr. Norton wanted the jury to know that prior to these events, he spoke personally with the Cache County Attorney's Office and was told that he should go out and arrest Lindley on his own and then file a civil action to get his money out of Lindley. Mr. Norton wanted the jury to know what steps he had taken to determine the legal course of action he should take in order to revoke the bond currently in place for Lindley. If for no other reason than knowing that the Cache County Attorney's Office was provided notice of the new law back in November 1999 and subsequently told Norton to go out and arrest Lindley himself, the jury could have reached the conclusion, or at the very minimum, Norton could have argued that he did not act intentionally and/or knowingly in violation of the law and he certainly could have argued his actions were done under the authority of law.

The Supreme Court of the United States has discussed the mens rea requirement on several occasions and each occasion has come down on the side of mens rea being required in all but the most extreme of circumstances. "[T]he existence of a mens rea is the rule of, rather than the exception to, the principles of Anglo-American criminal jurisprudence." United States v. United States Gypsum Co., 438 U.S. 422, 436 (1978) (citation omitted). The Utah Supreme Court has similarly stated it is a "basic proposition that a person cannot be found guilty of a criminal offense unless he harbors a requisite criminal state of mind or unless the prohibited act is based on strict liability." State v. Elton, 680 P.2d 727, 728 (Utah 1984).

In the present case, the State took the position that Norton arrested Lindley and intended to do so, even though he was not licensed. Therefore, Norton is guilty as charged. Because Norton was guilty of arresting Lindley without a license to do so, he was also guilty of

unlawfully detaining Lindley. And, because Norton was attempting to make an illegal arrest, Lindley was legally entitled to resist that arrest and therefore, Norton was guilty of assault when force was used to effect the arrest.

What Norton was never allowed to tell the jury was Norton arrested Lindley after having been told to do so by the Cache County Attorney's Office - evidence that Norton was acting under color of lawful authority. Norton was never allowed to tell the jury that he had researched the statutes, had taken the statutes to others, even other lawyers for advice, and was told by those individuals that he could effect his arrest on Lindley, return him to the jail and revoke the bond. Norton was never allowed to present evidence to the jury that would have allowed him to make a reasonable argument that he had done nothing more than what the County Sheriff's office themselves had done, in assisting Norton, even though the Sheriff's Office had written notice from the State of Utah with regard to the new law and sanctions for violating those laws (something Norton did not have).

It was inappropriate for the trial court to allow the State to carry its burden by simply showing the prohibited conduct occurred. "The unlawfulness of a defendant's actions, when they are prohibited by the criminal statute, may be shown by evidence of the actions themselves, unless and until evidence is offered by either party that raises the possibility of lawful justification for the acts. The State at all times continues to carry the burden of proving the absence of an affirmative defense or, . . . the unlawfulness . . ." State v. Durant, 674 P.2d 638, 642 (Utah 1983). Norton was entitled to present evidence of his intent to the jury, that he was lawfully justified in taking that course of action. In denying Norton the right to testify regarding his research and the direction given to him by the Cache County Attorney's Office, the trial court

basically defeated Norton's presumption of innocence, shifted the burden of proof to Norton but then removed from him the ability to confront the allegations raised by the State, essentially creating a notion of strict liability for the jury, leaving the jury nothing to decide.

The contention that an injury can amount to a crime only when inflicted by intention is no provincial or transient notion. It is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil.

Morissette v. United States, 342 U.S. 246, 250 (1952).

Norton was denied Due Process - his ability to challenge the State's version of Norton's state of mind was precluded by the trial court. Norton was denied his right to address his state of mind before the jury, he was denied his right to rebut the State's allegations and innuendoes regarding the mens rea element of these charges.

CONCLUSION

The Bail Bond Recovery Act does not establish a strict liability criminal offense. A Conviction for violating this Act requires evidence, at the beyond reasonable doubt level, that the defendant had the requisite mens rea, the appropriate personal culpability, to be held criminally liable for his or her actions. Whenever an element of the crime alleged in an Information includes an "intent" element, the defendant is guaranteed the right to present evidence, rebuttal or otherwise, that directly relates to that "intent" element. To prohibit a defendant from presenting evidence on that issue is clearly a violation of the defendant's guaranteed right to Due Process of the law.

In the present case, Norton did everything that he could think of to verify his responsibility in revoking Lindley's bond. Norton went to the Cache County Attorney's Office

for advice and was told he could arrest Lindley, return him to the jail and commence a civil action. Since Norton had taken such actions on behalf of the Cache County Attorney's Office in the past, the advice from the Cache County Attorney's Office seemed appropriate.

Norton got on the Internet and found Utah Code Ann. §77-20-8.5, which discussed apprehending and returning defendants to the jail on bail revocation type situations; however, Section 77-20-8.5 also stated an arrest and return to jail of a defendant was subject to the provisions of Title 53, Chapter 10 of the Utah Code. Norton linked, via the Internet, to Title 53, Chapter 10, and found legal provisions that did not seem relevant to what Norton was attempting to accomplish, to get Lindley back into the Cache County Jail and off an A+ 24 Hour Bail Bond release. Again, because Norton wanted to verify his responsibilities, he sought the advice of others regarding Title 53, Chapter 10.

His brothers, one a police officer and one a practicing attorney, both from other states, reviewed the chapter and each informed Norton that they could not see how that chapter effected Norton's decision and right to revoke Lindley's bond. Finally, in an attempt to avoid a potential decline in what could be a negative situation, Norton attempted to make the arrest of Lindley with the assistance of the Cache County Sheriff's Office. The critical factors regarding Norton's "intent" in effectuating the bond revocation never got presented to the jury. The jury was basically told "this is the law - it didn't happen this way - Norton's guilty - because he's guilty of one, he's guilty of all." All reference to the constitutionally required mens rea element was discounted and tossed out the window.

Norton was denied a fair trial. Norton was entitled to present evidence to the jury regarding what steps he took to verify the legalities of his conduct. Although he may not have

been allowed to make an argument based on mistake of law, he was none the less entitled to present evidence establishing his state of mind, his culpability for wrongful and illegal conduct. The judgments of conviction in this matter must be reversed and the matter should be remanded for a new trial wherein Mr. Norton should be afforded the rights he is constitutionally guaranteed.

RESPECTFULLY SUBMITTED this 7th day of August, 2002.

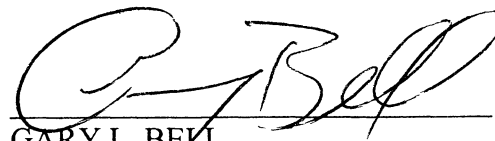


GARY L. BELLE
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of August, 2002, I caused to be hand-delivered or mailed, postage prepaid, two true and correct copies of the foregoing BRIEF OF APPELLANT to the following:

L. Dean Saunders
Deputy Weber County Attorney
2380 Washington Blvd., Second Floor
Ogden, Utah 84401



GARY L. BELL
Attorney for Appellant

ADDENDUM

**L. DEAN SAUNDERS, UBN 6324
WEBER COUNTY ATTORNEY'S OFFICE
2380 WASHINGTON BLVD., 2ND FLOOR
OGDEN, UTAH 84401
TELEPHONE: (801) 399-8377**

**IN THE FIRST JUDICIAL DISTRICT COURT
CACHE COUNTY, STATE OF UTAH**

STATE OF UTAH,

Plaintiff,

vs.

MICHAEL ALAN NORTON

Defendant.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER OF THE COURT**

Case No. 001100344

Judge Clint Judkins

This matter came before the Court on March 30, 2001, for a hearing on Plaintiff's Motion in Limine to prohibit Defendant's introduction of evidence relating to a Mistake of Law defense. Geoffrey Clark, representing Defendant, and Dean Saunders, representing the State, were present. After receiving memorandums and hearing oral arguments from both parties, the Court makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On or about April 16, 2000, Defendant arrested DeLoy Lindley for allegedly violating his bail agreement with Defendant.
2. Subsequently, the Cache County Attorney's Office charged Defendant with violating the Bail Bond Recovery Act.
3. On or about October 5, 2000, the State filed a motion containing a request to prohibit Defendant's introduction of evidence relating to a mistake of law defense.

4. The Court finds that prior to the charged crimes, Defendant possibly had a telephone conversation with Deputy Cache County Attorney Tony Baird.
5. The Court finds that during the conversation, Deputy Attorney Baird may have told Defendant that he did not wish pursue a criminal action against Defendant's client. However, Baird indicated that Defendant had a civil remedy he could pursue and possibly indicated that Defendant could 'pick-up' or arrest his client in order to recover under their contract.
6. While the Court finds that Deputy County Attorney Baird is a Public Servant as described under the statute, in this particular case, Baird was not acting in his role as a public servant charged by law with the responsibility for interpreting the law in question.
7. The conversation between Baird and Defendant was casual and informal.
8. Baird did not possess all of the facts, in this particular case, to make a formal interpretation of the law.
9. Baird did not reduce his statements to writing.

CONCLUSIONS OF LAW

1. The ignorance of law defense requires that the official statement or interpretation of the law be in writing.
2. To rely on a written interpretation of the law, the public servant making such interpretation must be acting within his duty or role as a public servant charged by law with responsibility for interpreting the law in question.
3. Defendant did not prove all of the necessary elements to establish a mistake of

law defense

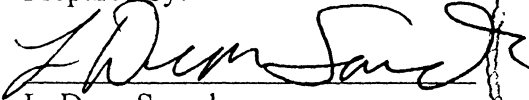
ORDER

The Defendant is hereby prohibited from introducing evidence or making argument at trial relating to the mistake of law defense.

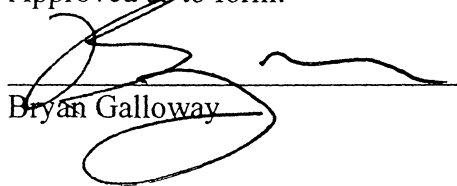
DATED this 24 day of Sept, 2001.

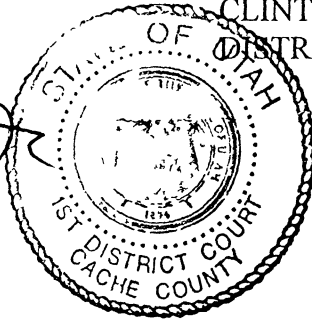

CLINT JUDKINS
DISTRICT COURT JUDGE

Prepared by:


L. Dean Saunders

Approved as to form:


Bryan Galloway



IN THE FIRST JUDICIAL DISTRICT COURT
STATE OF UTAH, IN AND FOR THE COUNTY OF CACHE

STATE OF UTAH,

Plaintiff,

v.

MICHAEL NORTON,

Defendant.

JURY VERDICT

Case No: 001100344

We the jurors duly impaneled find the Defendant, MICHAEL NORTON' :

_____ Not Guilty of Count 1: Operating/Acting as a Bail Enforcement and/or
Bail Recovery Agent or Apprentice without a license, a Class A
Misdemeanor.

X Guilty of Count 1: Operating as a Bail Enforcement and/or Bail Recovery
Agent or Apprentice without a license, a Class A Misdemeanor.

_____ Not Guilty of Count 2: Assault, a Class B Misdemeanor

X Guilty of Count 2: Assault, a Class B Misdemeanor.

_____ Not Guilty of Count 3: Unlawful Detention, a Class B Misdemeanor/.

X Guilty of Count 3: Unlawful Detention, a Class B Misdemeanor,

_____ Not Guilty of Count4: Operating/Acting as a Bail Enforcement and/or Bail
Recovery Agent or Apprentice without a License, a Class A
Misdemeanor.

X Guilty of Count 4: Operating/Acting as a Bail Enforcement and/or
Recovery Agent or Apprentice without a License, a Class A
Misdemeanor, a Class A Misdemeanor.

0011-344
11/21

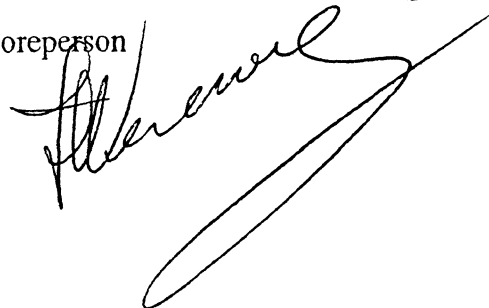
Not Guilty of Count 5: Unlawful Detention, a Class B Misdemeanor.

 X Guilty of Count 5: Unlawful Detention, a Class B Misdemeanor.

Dated: 15 November '01

 H. Verhoef

Foreperson

A handwritten signature in black ink, appearing to read 'H. Verhoef', with a long, sweeping horizontal stroke extending to the right.

FIRST DISTRICT - CACHE COURT
CACHE COUNTY, STATE OF UTAH

STATE OF UTAH, : MINUTES
Plaintiff, : SENTENCE, JUDGMENT, COMMITMENT
 :
 :
vs. : Case No: 001100344 MO
 :
MICHAEL ALAN NORTON, : Judge: CLINT S. JUDKINS
Defendant. : Date: January 14, 2002

PRESENT

Clerk: lindac

Prosecutor: SAUNDERS, L. DEAN

Defendant

Defendant's Attorney(s): GALLOWAY, BRYAN P

DEFENDANT INFORMATION

Date of birth: June 29, 1968

Video

CHARGES

1. ACTING AS A BAIL RECOVERY AGT W/O A LICE - Class A Misdemeanor
- Disposition: 11/15/2001 Guilty
2. SIMPLE ASSAULT - Class B Misdemeanor
- Disposition: 11/15/2001 Guilty
3. UNLAW DETENTION - Class B Misdemeanor
- Disposition: 11/15/2001 Guilty
4. ACTING AS A BAIL RECOVERY AGT W/O A LICE - Class A Misdemeanor
- Disposition: 11/15/2001 Guilty
5. UNLAW DETENTION - Class B Misdemeanor
- Disposition: 11/15/2001 Guilty

SENTENCE JAIL

Based on the defendant's conviction of ACTING AS A BAIL RECOVERY AGT W/O A LICE a Class A Misdemeanor, the defendant is sentenced to a term of 365 day(s) in the Cache County Jail. The total time suspended for this charge is 323 day(s).

Based on the defendant's conviction of SIMPLE ASSAULT a Class B Misdemeanor, the defendant is sentenced to a term of 180 day(s) in the Cache County Jail. The total time suspended for this charge is

Case No: 001100344
Date: Jan 14, 2002

138 day(s).

Based on the defendant's conviction of UNLAW DETENTION a Class B Misdemeanor, the defendant is sentenced to a term of 180 day(s) in the Cache County Jail. The total time suspended for this charge is 138 day(s).

Based on the defendant's conviction of ACTING AS A BAIL RECOVERY AGT W/O A LICE a Class A Misdemeanor, the defendant is sentenced to a term of 365 day(s) in the Cache County Jail. The total time suspended for this charge is 323 day(s).

Based on the defendant's conviction of UNLAW DETENTION a Class B Misdemeanor, the defendant is sentenced to a term of 180 day(s) in the Cache County Jail. The total time suspended for this charge is 138 day(s).

Defendant is to report to the Cache County Jail.
Commitment is to begin immediately.

SENTENCE JAIL CONCURRENT/CONSECUTIVE NOTE

Sentence is to run concurrent.

SENTENCE FINE

Charge # 1	Fine: \$600.00
	Suspended: \$0.00
	Surcharge: \$275.68
	Due: \$600.00

Charge # 2	Fine: \$400.00
	Suspended: \$0.00
	Surcharge: \$183.78
	Due: \$400.00

Charge # 3	Fine: \$400.00
	Suspended: \$0.00
	Surcharge: \$183.78
	Due: \$400.00

Charge # 4	Fine: \$600.00
	Suspended: \$0.00
	Surcharge: \$275.68

Case No: 001100344
Date: Jan 14, 2002

Due: \$600.00

Charge # 5 Fine: \$400.00
 Suspended: \$0.00
 Surcharge: \$183.78
 Due: \$400.00

 Total Fine: \$2400.00
 Total Suspended: \$0
 Total Surcharge: \$1102.70
 Total Principal Due: \$2400.00
 Plus Interest

Probation is to be supervised by Adult Probation & Parole.

PROBATION CONDITIONS

Defendant will enter into agreement with Probation and abide by all terms and conditions.

Violate no laws.

Submit to random search and seizure.

Submit to alcohol & drug testing and urinalysis upon request of law enforcement, probation officer or substance abuse counselor.

Pay medical expenses and counseling costs of the victim, including costs of counseling of victim's children.

Receive a mental health evaluation and complete treatment as recommended.

No contact with victim or his family.

Dated this 15 day of JAN, 2002


CLINT S. JUDKINS
District Court Judge

